



(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 219 and 252

[Docket No. DARS 2015-0044]

RIN 0750-AI68

Defense Federal Acquisition Regulation Supplement: Clauses with Alternates—Small Business Programs (DFARS Case 2015-D017)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify clauses and their prescriptions for small business programs and to create a basic and alternate clause structured in a manner to facilitate use of automated contract writing systems. The rule also includes the full text of the alternate, rather than only providing the paragraphs that differ from the basic clause. The rule also clarifies one clause that is an alternate to a Federal Acquisition Regulation (FAR) clause.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60**

days after date of publication in the FEDERAL REGISTER], to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2015-D017, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2015-D017" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015-D017." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015-D017" on your attached document.

- o E-mail: osd.dfars@mail.mil. Include DFARS Case 2015-D017 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Julie Hammond, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Julie Hammond, telephone 571-372-6174.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is issuing this proposed rule to clarify, in the small business programs clause prescriptions, the appropriate use of the basic clause and its alternate clause. This rule does not substantively change the text of any clause (basic or alternate) nor does it change the requirement for use of any clause.

II. Discussion and Analysis

This proposed rule addresses one DFARS part 219 clause that has an alternate and one clause that is an alternate to a FAR clause. The affected clauses are 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), with one alternate, and 252.219-7010, Alternate A.

This proposed rule provides a basic clause in full text and the alternate to the basic clause in full text for DFARS clause 252.219-7003 instead of only providing the paragraphs that are changed in the alternate. Each clause (basic and alternate) will have a separate prescription, stating the applicability of the clause. A separate DFARS clause has been modified to incorporate FAR clause 52.219-18 and its two alternates into 252.219-7010, now titled "Notification of Competition Limited to Eligible 8(a) Concerns-Partnership Agreement."

The proposed rule does not change the clause prescriptions, and only clarifies for contracting officers the applicability of the clause (basic and alternate). The introductory text for the alternate clause will continue to explain what portions of the alternate are different from the basic clause.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

DoD does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it merely revises the prescriptions for clarity

and use of provisions and clauses in solicitation and contracts. The clauses with alternates are revised to include full text of the basic clause and the alternate clause for ease of use for the small businesses. However, an initial regulatory flexibility analysis has been performed and is summarized as follows: DFARS 252.219-7003 Small Business Subcontracting Plan (DoD Contracts) and its alternate are prescribed to be used with FAR 52.210-9 and its alternates. FAR 52.219-9 does not apply to small business concerns. Therefore there is no burden on any small business from this rule relative to the DFARS 252.219-7003 basic and alternate clauses.

DFARS 252.219-7010, Alternate A, is the alternate for FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns. DFARS 252.219-7010 will affect only those 8(a) concerns when competing for an 8(a) award. Currently there are approximately 8,567 active small business concerns in the 8(a) program. However, these entities should not be economically impacted by the changes addressed in this proposed rule, since nothing substantive will change in solicitations or contracts for potential offerors, and only the appearance of how clause alternates are presented in solicitations and contracts will be changed. This rule should result in potential benefits to offerors, including small businesses, resulting in offerors expending less time to review and understand the solicitation

and contract. The rule anticipates saving contractors' time by making all paragraph substitutions from the basic clause and by not requiring offerors to read inapplicable paragraphs contained in the basic clauses where alternates are also included in the solicitations and contracts.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2015-D017), in correspondence.

V. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 219 and 252

Government procurement.

Jennifer L. Hawes,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 219 and 252 are proposed to be amended as follows:

1. The authority citation for parts 202 and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 219—SMALL BUSINESS PROGRAMS

2. In section 219.708, revise paragraph (b)(1)(A) to read as follows:

219.708 Contract clauses.

(b)(1)(A) Use the basic or alternate clause at 252.219-7003, Small Business Subcontracting Plan (DoD Contracts), in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that contain the clause at FAR 52.219-9, Small Business Subcontracting Plan.

(1) Use the basic clause at 252.219-7003, when using the basic, alternate I, or alternate II of FAR 52.219-9.

(2) Use the alternate I clause at 252.219-7003, when using Alternate III of FAR 52.219-9.

* * * * *

3. In section 219.811-3, revise paragraph (2) to read as follows:

219.811-3 Contract clauses.

* * * * *

(2) Use the clause at 252.219-7010, Notification of Competition Limited to Eligible 8(a) Concerns—Partnership Agreement, in lieu of the clause at FAR 52.219-18, Notification of Competition Limited to Eligible 8(a) Concerns, in competitive

solicitations and contracts when the acquisition is accomplished using the procedures of FAR 19.805 and processed in accordance with the PA cited in 219.800.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Amend section 252.219-7003 by—

- a. Revising the introductory text, clause title, and date;
- b. In paragraph (c) (2), removing “Section” and adding “section” in its place; and
- c. Revising Alternate I.

The revisions read as follows:

252.219-7003 Small Business Subcontracting Plan (DoD Contracts) .

Basic. As prescribed in 219.708 (b) (1) (A) and (b) (1) (A) (1), use the following clause:

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) —BASIC (DATE)

* * * * *

Alternate I. As prescribed in 219.708 (b) (1) (A) and (b) (1) (A) (2), use the following clause, which uses a different paragraph (f) than the basic clause.

SMALL BUSINESS SUBCONTRACTING PLAN (DOD CONTRACTS) —ALTERNATE I (DATE)

This clause supplements the Federal Acquisition Regulation 52.219-9, Small Business Subcontracting Plan, clause of this contract.

(a) Definitions. Summary Subcontract Report (SSR) Coordinator, as used in this clause, means the individual at the department or agency level who is registered in eSRS and is responsible for acknowledging receipt or rejecting SSRs in eSRS for the department or agency.

(b) Subcontracts awarded to workshops approved by the Committee for Purchase from People Who are Blind or Severely Disabled (41 U.S.C. 8502-8504), may be counted toward the Contractor's small business subcontracting goal.

(c) A mentor firm, under the Pilot Mentor-Protege Program established under section 831 of Public Law 101-510, as amended, may count toward its small disadvantaged business goal, subcontracts awarded to—

(1) Protege firms which are qualified organizations employing the severely disabled; and

(2) Former protege firms that meet the criteria in section 831(g)(4) of Public Law 101-510.

(d) The master plan is approved by the Contractor's cognizant contract administration activity.

(e) In those subcontracting plans which specifically identify small businesses, the Contractor shall notify the Administrative

Contracting Officer of any substitutions of firms that are not small business firms, for the small business firms specifically identified in the subcontracting plan. Notifications shall be in writing and shall occur within a reasonable period of time after award of the subcontract. Contractor-specified formats shall be acceptable.

(f)(1) For DoD, the Contractor shall submit reports in eSRS as follows:

(i) The Standard Form 294, Subcontracting Report for Individual Contracts, shall be submitted in accordance with the instructions on that form.

(ii) An SSR for other than a commercial subcontracting plan, or construction and related maintenance repair contracts, shall be submitted in eSRS to the department or agency within DoD that administers the majority of the Contractor's individual subcontracting plans. An example would be Defense Finance and Accounting Service or Missile Defense Agency.

(2) For DoD, the authority to acknowledge receipt or reject reports in eSRS is as follows:

(i) Except as provided in paragraph (f)(2)(ii) of this clause, the authority to acknowledge receipt or reject SSRs in eSRS resides with the SSR Coordinator at the department or agency that administers the majority of the Contractor's individual subcontracting plans.

(ii) The authority to acknowledge receipt or reject SSRs for construction and related maintenance and repair contracts resides with the SSR Coordinator for each department or agency.

(End of clause)

5. Revise section 252.219-7010 to read as follows:

252.219-7010 Notification of Competition Limited to Eligible

8(a) Concerns-Partnership Agreement.

As prescribed in 219.811-3(2), use the following clause:

NOTIFICATION OF COMPETITION LIMITED TO ELIGIBLE 8(A) CONCERNS-PARTNERSHIP AGREEMENT (DATE)

(a) Offers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA's 8(a) Program and which meet the following criteria at the time of submission of offer:

(1) The Offeror is in conformance with the 8(a) support limitation set forth in its approved business plan.

(2) The Offeror is in conformance with the Business Activity Targets set forth in its approved business plan or any remedial action directed by the SBA.

(3) If the competition is to be limited to 8(a) concerns within one or more specific SBA regions or districts, then the offeror's approved business plan is on the file and serviced by

_____.

[Contracting Officer completes by inserting the appropriate SBA District and/or Regional Office(s) as identified by the SBA.]

(b) By submission of its offer, the Offeror represents that it meets all of the criteria set forth in paragraph (a) of this clause.

(c) Any award resulting from this solicitation will be made directly by the Contracting Officer to the successful 8(a) offeror selected through the evaluation criteria set forth in this solicitation.

(d)(1) Agreement. A small business concern submitting an offer in its own name shall furnish, in performing the contract, only end items manufactured or produced by small business concerns in the United States or its outlying areas, unless—

(i) The Small Business Administration has determined that there are no small business manufactures or processors in the Federal market place in accordance with FAR 19.502-2(c);

(ii) The acquisition is processed under simplified acquisition procedures and the total amount of this contract does not exceed \$25,000, in which case a small business concern may furnish the product of any domestic firm; or

(iii) The acquisition is a construction or service contract.

(2) The _____ [insert name of SBA's contractor]
will notify the _____ [insert name of contracting agency]

Contracting Officer in writing immediately upon entering an agreement (either oral or written) to transfer all or part of its stock or other ownership interest to any other party.

(End of clause)

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